

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**INTERIM APPLICATION NO. 2267 OF 2020
IN
NOTICE OF MOTION NO. 681 OF 2019
IN
COMMERCIAL (IP) SUIT NO. 340 OF 2019**

Vertellus Speciality Materials (India) Pvt.Ltd. ...Applicant/
Defendant No.1

In the matter between

Mr.Hemant Bandodkar & Anr. ...Plaintiffs
vs.
Vertellus Speciality Materials (India) Pvt.Ltd. & Ors. ...Defendants

**WITH
INTERIM APPLICATION NO. 2056 OF 2020
IN
COUNTER CLAIM NO. 25 OF 2019
IN
COMMERCIAL (IP) SUIT NO. 340 OF 2019**

Mr.Hemant Bandodkar ...Applicant

In the matter between

Vertellus Speciality Materials (India) Pvt.Ltd. ...Plaintiff
vs.
Mr.Hemant Bandodkar ...Defendant

Mr.Sanjay Kher i/b. Amit Ashok Gharte for Plaintiffs/Applicants in IA 2056/2020.

Mr.Darius Khambatta, Senior Advocate with Siddharth Chopra, Snehal Jain, Savni Dutt, Amitarao Mitra, Thomas George, Tanvi Sinha i/b. Saikrishna & Associates for Defendant No.1/Applicant to IA 2267/2020.

CORAM : S.C. GUPTE, J.

DATE : 17 DECEMBER 2020

P.C. :

These two Interim Applications, namely, Interim Application Nos.2267/2020 and 2056/2020, are being disposed of, by consent of parties, in terms of the following order :

1. Prof. Madhu Vinjamur, the Head of Department for Chemical Engineering, IIT Bombay shall appoint a Local Commissioner to visit Defendant No.1's factory at Plot No. 287/1 & 2A, Phase II, G.I.D.C, Vapi – 396195, Gujarat ("Defendant No.1's plant") alone. The name and contact details of the Local Commissioner shall be communicated to the Plaintiffs' counsel and Defendant No.1's counsel within a week from the date of this order at the following email addresses:
 - a. Plaintiffs' Advocate- gharteamit@yahoo.in
 - b. Defendant No.1's Advocate– savni@saikrishnaassociates.com
2. The Local Commissioner shall take the aid of a photographer and a videographer to take photographs and videos of the Defendant No.1's manufacturing process layout, including its installed machinery and scrap machinery, which is the confidential proprietary information and trade secret of Defendant No.1. The storage drive (memory stick / card) containing photographs and the video recording shall immediately be placed in a cover, to be signed and sealed by the Local Commissioner. The sealed cover shall be handed over to Defendant No. 1 for filing before this Court. A photograph of said cover, signed and sealed, shall be retained by the Local Commissioner. Parties agree that these photo and video records are without prejudice to the Plaintiffs' and Defendant No.1's contentions made in the Suit and Counterclaim.

3. On the Plaintiffs' request, all expenses in respect of the Local Commissioner's aforesaid commission, including all associated costs, such as those related to the Commissioner's fees, costs in respect of photography, videography, transport, etc. shall be borne by the Defendant No.1. The Plaintiff agrees that it shall not contest the independence of the Local Commissioner on the ground that the Defendant No. 1 has borne its fees and costs.
4. Parties agree that prayer (h) of the Notice of Motion No. 681 of 2019 shall stand vacated upon the handing over of the signed and sealed cover by the Local Commissioner as stated in clause 2 hereinabove.
5. Interim Application No. 2267 of 2020 stands disposed-off in terms of present Consent Terms.
6. These Consent Terms have been passed without prejudice to the rights and contentions of the parties including in relation to the Notice of Motion No. 681 of 2019, the Commercial IP Suit No. 340 of 2019, the Counterclaim No. 25 of 2019, the Plaintiff's application alleging non-compliance of the order dated 28th November 2018 being I.A. No. (L) 9071 of 2020 and the contentions in Commercial Appeal No. (L) 3338 of 2020. It is made clear that the photographs and videographs contained in the Commissioner's Report are expected to indicate the current status and state of affairs in respect of the manufacturing process layout of the Defendant No.1 and it shall not in any way prejudice the Plaintiffs' case concerning the status and state of affairs of the manufacturing process layout as at the relevant date. All rights and contentions of the parties in that behalf are kept open.
7. The Plaintiffs have also filed an I.A. No. 2056 of 2020 seeking condonation of delay in filing its Written Statement to the Counterclaim filed by Defendant No.1, which is also listed today. Defendant No.1 does not oppose this I.A. and only submits that the copy of the Written Statement has not been provided to the

Defendant No.1. Subject to the Written Statement being served on the Defendants, this I.A. is also allowed.

8. The Local Commissioner shall be required to execute an agreement ensuring the confidentiality and non-use of confidential and trade secret information to which the Local Commissioner gains access. Defendant No.1 undertakes that this agreement shall not contain any matter that shall prejudice the Local Commissioner in any manner against the Plaintiffs whatsoever, and the same shall be restricted to clauses that are normally part of any confidentiality agreement. A copy of this agreement shall be submitted by the Local Commissioner in the sealed cover mentioned in clause 2.
9. Parties agree that a Scientific Advisor in terms of Sec.115 of the Patents Act, 1970 be appointed in this suit. Parties also agree that they will engage with each other to formulate, within 6 weeks, the specific questions to be sent to the Scientific Advisor.

2 In view of the order passed on Interim Application No.2056/2020, learned Counsel for the Defendant tenders his written statement. The same is taken on record. The suit to appear for case management directions on 29 January 2021. All rights and contentions of the parties in relation to the status and state of affairs of the manufacturing process layout of Defendant No.1 as at the relevant time are kept open.

(S.C. GUPTE, J.)